

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

- - -

UNITED STATES OF AMERICA, . Case No. 1:12-cr-043
.
Plaintiff, .
.
- v - . *Sentencing*
.
TRACY BIAS, . Wednesday, May 21, 2014
.
Defendant. . Cincinnati, Ohio
.
. 9:35 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MICHAEL R. BARRETT

For the Plaintiff: TIMOTHY D. OAKLEY, ESQ. (AUSA)
United States Attorney's Office
221 East Fourth Street, Suite 400
Cincinnati, Ohio 45202

For the Defendant JOHN T. KELLER, ESQ.
2345 Kemper Lane
P.O. Box 6129
Cincinnati, Ohio 45206

PETER COLIN LINK, ESQ.
810 Sycamore Street, Fifth Floor
Cincinnati, Ohio 45202

Also present: Agent Christopher Kresnak, DEA
Agent Brian Carroll, FBI
Keith Manfra, U.S. Pretrial Services

Law Clerk: Lindsay Potrafke, Esq.

Courtroom Deputy: Barbara A. Crum

Court Reporter: Maryann T. Maffia, RDR
239 Potter Stewart U.S. Courthouse
100 E. Fifth Street
Cincinnati, Ohio 45202

P R O C E E D I N G S

COURTROOM DEPUTY: On the docket this morning is District Court Case Number 1:12-CR-43, Defendant 1: *United States of America versus Tracy Bias*.

We're here this morning for sentencing.

THE COURT: All right. Counsel want to enter their appearances for the record, please.

MR. OAKLEY: Good morning, Your Honor. Tim Oakley for the United States.

MR. KELLER: John Keller on behalf of Mr. Bias.

MR. LINK: Peter Link, also on behalf of Mr. Bias.

THE COURT: Okay. You guys, if you want to work from the table, that's fine as long as you stay close to a microphone. Otherwise, you can stay at the podium, wherever you're most comfortable.

You guys want to work from the table? Okay, that's good.

Okay. Let's just recap. It was almost a year ago, I guess, on June 7th, 2013, Mr. Bias appeared in front of me. He entered a plea of guilty to Conspiracy to Distribute and Dispense a Controlled Substance, which was the first count of the Superseding Indictment. There was a Plea Agreement. We'll talk a little bit more about that when we get to that stage of the proceeding. The case was referred to the Probation Department for a PSI. It was originally cut on August 26th of last year and revised in the fall. I have

1 received the government's Sentencing Memorandum as well as the
2 defendant's Sentencing Memorandum.

3 So Tim, have you received a copy of -- well, obviously you
4 have yours, but did you receive a copy of defendant's
5 memorandum and the PSI?

6 MR. OAKLEY: Your Honor, I've received a copy of the
7 PSI and the objections contained within. I'm not sure that I
8 have received a separate Sentencing Memorandum.

9 THE COURT: It was Document 229.

10 MR. OAKLEY: We're prepared to proceed regardless.

11 THE COURT: All right.

12 Counsel, you guys have received everything, correct, and
13 discussed it with Mr. Bias?

14 MR. LINK: Yes, Your Honor.

15 MR. KELLER: Yes, Your Honor.

16 THE COURT: All right. And I also have an updated, I
17 guess dated May 15th, an updated health situation on Mr. Bias
18 regarding his high blood pressure and his neck and back pain
19 and that bit. We can talk about that at the appropriate time.
20 Is that all right?

21 MR. LINK: Yes.

22 THE COURT: Okay, good. So the officer that wrote
23 the report used the 2010 edition of the Guidelines Manual.
24 As we go through, if you guys have objections, let's just run
25 through them at the time.

1 But in any event, a violation of 21 U.S.C. 841(a) is
2 governed by Guideline 2D1.1. And we all know the way you use
3 that is you use the Drug Quantity Table to find out the amount
4 of drugs involved in this case. The agents in this case
5 provided extensive information on the amount of medication
6 provided, so we think he is Offense Level 38 according to the
7 probation officer.

8 All right. And then we have the injury that occurred
9 November 4, 2009. William Adams became a patient at the
10 Portsmouth clinic, started on OxyContin. He died November 5th
11 after consuming a portion of the OxyContin that was
12 prescribed. Mr. Bias denies any causation between his
13 behavior and Mr. Adams' death.

14 He's still a 38. Then we have adjustment for role in the
15 offense. He was clearly an organizer. Mr. Bias and
16 Mr. Journey managed this operation, devised the scheme, so
17 there was a two-level adjustment that was considered by the
18 probation officer, and the added adjusted offense level
19 becomes a 40.

20 Then you have acceptance of responsibility by entering the
21 plea, which is a negative 2; and then the timely fashion,
22 which he did, got another point off. So he ends up at a 37.

23 His Criminal History would put him at a category of a
24 Roman numeral II.

25 So at the end of day he would have an offense level

1 calculation of 37, a Criminal History of II, which would give
2 him a guidelines provision of up to 235 to 240 months. The
3 Probation Department in this case has recommended a 235-month
4 sentence. Supervised release is three years to life. They
5 recommended three years. He is not eligible for probation.

6 A fine we can discuss later. It could be up to a million
7 dollars, but I'll talk to defense counsel about that. And
8 there is also a one-hundred-dollar special assessment.

9 There was the Plea Agreement in this case which talked
10 about sentencing limitations, which we'll get to when we're
11 ready.

12 As to the actual calculation itself, based on his criminal
13 history, the amount of narcotics involved in this case, are
14 there any objections to that calculation?

15 MR. LINK: Yes, there are, Your Honor.

16 THE COURT: All right. Let's run through them.

17 MR. LINK: Although an enhancement hasn't been placed
18 in the assessment for that purpose, we object to the inclusion
19 of Mr. Adams and facts pertaining to Mr. Adams in that
20 investigation or in the sentencing. The law is pretty clear
21 that unless facts regarding a death are admitted to or proven
22 to a jury, that they cannot be considered by the Court in
23 sentencing. So I'd like to put that out there.

24 Now, that -- it really makes not much of a difference as
25 they are calculating the 38 Base Offense Level based on the

1 quantity of drugs involved, but I would like to, again, put
2 that on the record that the alleged death is not proper for
3 the Court to consider at this time.

4 THE COURT: Tim?

5 MR. OAKLEY: Your Honor, with all due respect, I
6 think it's a misstatement of the facts and the law. If we're
7 talking about *Apprendi*, I would agree that it would need to be
8 proven, but this doesn't change either the mandatory minimum,
9 the maximum potential under the law, or it doesn't affect the
10 Guidelines whatsoever. What it is is, it's stated in there
11 that he died. There is no dispute that he died, there's no
12 dispute, I don't think, that he died of a drug overdose; but
13 it was not used to enhance his guideline sentencing in any
14 fashion. What it does show, as we said in our memorandum,
15 it's just another example of the damage that these pills were
16 causing to the community. If anything, it may be a factor the
17 Court can consider in the 3553.

18 The Court can consider any factor it wants under 3553,
19 including acquitted conduct. But again, Your Honor, I don't
20 believe that it's really an objection that needs to be ruled
21 upon by the Court; but if it is, it should be denied.

22 THE COURT: Yeah. I mean, I'm not sure it comes
23 under the category of a clear objection anyway.

24 But Tim, just in terms of the sentencing in this case and,
25 counsel, in terms of the sentencing, I think the width and

1 breadth of this conspiracy was large enough that, in arriving
2 at eventual sentence in this case, I am not going to take the
3 actual death into consideration. I don't think that's
4 necessary for me to get where I am going to end up, in all
5 likelihood, after reading the PSI and both sets of memorandum.

6 So for the Court of Appeals purposes, I am not going to
7 consider that as part of a sentencing enhancement.

8 MR. LINK: There is one other issue, Your Honor.

9 THE COURT: Go ahead.

10 MR. LINK: Now, the presentence investigation clearly
11 states that the Plea Agreement had no impact on the
12 recommended range. However, I would point out to the Court --

13 THE COURT: Could I ask one question? Was the Plea
14 Agreement sealed?

15 MR. OAKLEY: I believe it was.

16 THE COURT: Well, so are we --

17 MR. OAKLEY: We'd move to unseal it, Your Honor.

18 THE COURT: Do you have an objection to the Plea
19 Agreement being unsealed? Otherwise, I'm going to ask some
20 people to leave.

21 MR. LINK: We have no objection.

22 MR. OAKLEY: And it may have been unsealed at the
23 trial of Steven Hillman also.

24 THE COURT: Barb says it was, so it's already been
25 unsealed. Okay. That's all right.

1 I'm sorry. Go ahead.

2 MR. LINK: The presentence investigation report says
3 that the Plea Agreement itself has no impact on the
4 calculation. However, at the time this Court accepted
5 Mr. Bias plea on June 7th of last year, there was a discourse
6 that was had. In that plea colloquy, it was explained to
7 Mr. Bias that the offense level would be a 37; and that after
8 applying the three-point reduction for continued acceptance of
9 responsibility, which has been applied in this case, that the
10 offense level would be reduced to a 34.

11 We would ask that the Court honor that as that was what
12 was represented in open court and that is the understanding
13 that Mr. Bias had in entering into his plea.

14 THE COURT: Okay. Hang on one second. I do have a
15 copy of one part of the transcript, but I don't believe -- all
16 I have is the part where it's filed under seal. Hang on one
17 second.

18 MR. LINK: We are talking at pages 13 and 14, Your
19 Honor, beginning at line 15.

20 THE COURT: Yeah, I'm not -- that's what I'm saying,
21 counsel. I don't have those. I've just got the earlier
22 part.

23 Looking in the Plea Agreement, where do we talk about the
24 calculation where it would have led to a 34?

25 MR. OAKLEY: It's paragraph 3, Your Honor, that the

1 defendant understands that the United States believes the
2 level is a 37. He also understands that they are advisory and
3 not mandatory.

4 Continuing one with paragraph 3, the Court is required to
5 consider them but not required to follow them. It may impose
6 a sentence higher or lower based on the applicable range of
7 the Federal Sentencing Guidelines of the offense under the
8 Indictment.

9 He has reviewed it and understands how they may apply to
10 this case but does not bind the Court.

11 THE COURT: Okay. Got it. If it was a 34, it would
12 be a 168 to 210? Is that right? Okay.

13 What about the -- you want to talk about the -- discuss
14 the cap in the Plea Agreement?

15 MR. LINK: Yes, Your Honor, if we could.

16 Now, as to that cap, as the Court knows, this case was
17 only resolved by a plea, but that plea was only reached after
18 Mr. Bias was able to reach an agreement with the government
19 and an understanding with this Court. As we've already noted,
20 the Court represented to Mr. Bias that the level would be a 34
21 with the three-point reduction for acceptance of
22 responsibility, but --

23 THE COURT: Well, I think as Mr. Oakley points out, I
24 don't think "represented" would have been the word. It would
25 have been suggested.

1 MR. LINK: It was asked if Mr. Bias understood that
2 to be the case, and he said yes.

3 THE COURT: Right. I also asked him if he understood
4 that everything was subject --

5 MR. LINK: Not binding on the Court, yes.

6 THE COURT: Yeah.

7 MR. LINK: Yes. That was fully explained to Mr. Bias
8 at the time.

9 THE COURT: Okay.

10 MR. LINK: Your Honor, first of all, this plea was
11 only reached after the Statement of Facts was amended to omit
12 any allegations that Mr. Bias owned Trinity Health Care or
13 that Mr. Bias sponsored patients to this clinic or any of the
14 clinics involved. After that had been amended and after that
15 Amended Statement of Facts was accepted by the government, the
16 government agreed that it would seek a sentence of no more
17 than ten years if Mr. Bias cooperated, but also agreed that if
18 Mr. Bias did not cooperate, that it would move to withdraw his
19 plea. And that's at paragraph 5 of the Plea Agreement, I
20 believe.

21 In this case, nobody is contesting that Mr. Bias
22 shouldn't get the three-level reduction for acceptance of
23 responsibility, but the government's position is now that the
24 sentencing level should be a 37 after the three-point
25 reduction. And even though nobody is arguing that Mr. Bias

1 shouldn't get the reduction for acceptance of responsibility,
2 the government's position is now that he didn't cooperate.

3 The government is primarily basing these claims that he
4 didn't cooperate on -- because Mr. Bias still won't admit that
5 he owns Trinity Health Care and because he discussed an
6 earlier version of the Statement of Facts with his former
7 attorney, Steve Hillman.

8 As to the fist of these claims, Your Honor, Mr. Bias --

9 THE COURT: What is the timing of that discussion?
10 Was Hillman still representing him or was it post-Hillman's --

11 MR. LINK: At that time he was still representing him
12 in the civil forfeiture action, which was surrendered as --

13 THE COURT: Well, I think he fired him in open court,
14 didn't he, if I remember?

15 MR. OAKLEY: He moved -- well, what happened --

16 THE COURT: Hillman didn't --

17 MR. OAKLEY: Hillman had filed a civil action to
18 recover property on his own that was not authorized by
19 Mr. Bias.

20 THE COURT: Right. And Mr. Bias confirmed that?

21 MR. OAKLEY: Mr. Bias confirmed. But at that same
22 time, Mr. Bias had two defense counsel: Mr. Link and
23 Mr. Keller. Mr. Hillman was not representing Mr. Bias in the
24 criminal.

25 MR. LINK: That is true, Your Honor. And not only

1 that, Your Honor, but Mr. Keller and I did advise Mr. Bias
2 throughout the course of this to have no further contact with
3 Steve Hillman. However --

4 THE COURT: Well, back up. Help me clarify. What's
5 the timing of that conversation, as you understand it, versus
6 the timing of signing off on the Plea Agreement?

7 MR. LINK: It was before and well before that point.
8 What was shared with Mr. Hillman was an initial proposed
9 Statement of Facts. There was some back-and-forth between the
10 United States Government and defense counsel as to amending
11 that Statement of Facts and finally reach an agreement by
12 which a plea could be had.

13 And so prior not only to signing the agreement, but prior
14 to arriving at the Statement of Facts, which was eventually
15 signed by Mr. Bias, Mr. Bias shared that earlier proposed
16 Statement of Facts with Mr. Hillman.

17 THE COURT: Okay.

18 MR. LINK: Now, as to the allegations that there was
19 some secret meeting, some type of clandestine operation, Your
20 Honor, I would suggest to the Court this was two co-defendants
21 discussing a case that they were both in, and that discussion
22 happened before any agreement was reached with the government.

23 Now, a Plea Agreement, like all Plea Agreements, is
24 basically a contract, Your Honor; and like all contracts,
25 there is an implied duty of good faith that goes along with

1 that agreement. It would be hard to imagine a scenario where,
2 in good faith, the United States Government could say that, by
3 signing that agreement, Mr. Bias retroactively agreed to be
4 cooperative in the past.

5 As to the second claim, Your Honor, that Mr. Bias still
6 won't admit his ownership in Trinity, again, he has denied
7 that all along. The government knew that he would deny that
8 at the time that he signed the plea, and that language was
9 removed from the Statement of Facts for that reason.

10 The government met with him, agreed to accept his plea,
11 and was only able to get the plea as a result of agreeing to
12 take that language out. So now it's hard to see how, again in
13 good faith, the government could claim that he hasn't
14 cooperated with them because he continues to deny what he
15 denied all along.

16 The government knew these facts the whole time for the
17 last almost year since it's accepted his plea, and the
18 government could have said -- knowing that Mr. Bias would deny
19 these things, it could have said, "You're a liar, Mr. Bias.
20 We don't believe you, and we're not going to accept your plea.
21 You're going to trial." And they could have filed a motion to
22 withdraw as required by the Plea Agreement, but they did not.

23 Instead, they let him waive his constitutional rights.
24 They had him agree to the forfeiture of certain property.
25 They had him meet with the government and its agents on

1 multiple occasions, finally had him testify at trial.

2 Now, frankly, Your Honor, that -- it can't -- that egg
3 can't be unscrambled. They accepted his plea knowing these
4 facts, and we are here today in good faith seeking good faith,
5 and we're essentially asking for what was agreed to in that
6 Plea Agreement.

7 THE COURT: Do you have anything else on that issue?

8 MR. LINK: Um, I could go on at length, Your Honor,
9 but I don't want to waste the Court's time as to this. I will
10 say for the record that at the time we were negotiating a plea
11 with the government, it was represented to defense counsel
12 that co-defendant Tracy Bias was going to be getting a
13 substantially larger sentence than what Mr. Bias and what was
14 contemplated in this Plea Agreement for Mr. Bias --

15 MR. KELLER: Not Tracy. Bart.

16 MR. LINK: Oh, I'm sorry. Yes. Mr. Journey was
17 going to be given a substantially larger sentence than
18 actually what was contemplated by Mr. Bias' Plea Agreement.
19 Although we were not allowed to share the specific numbers of
20 the sentence that was represented to us with Mr. Bias, that
21 certainly went into part of our calculation as defense
22 attorneys in recommending that Mr. Bias take this plea.

23 Needless to say, we were surprised to find that
24 Mr. Journey had recently been sentenced to five years in this
25 court on the same offense levels with nearly identical

1 conduct.

2 Now, as much as the government wants to make Mr. Bias out
3 to be a criminal mastermind in this, Your Honor, this is a
4 business model that was learned and known by Bart Journey as a
5 result of working with his brother, Michael Journey, since as
6 early as 2004. This is a business model that Mr. Journey
7 pitched to his neighbor, Mr. Bias, and that Mr. Bias accepted.
8 What was supposed to happen is that Mr. Bias was going to run
9 one clinic while Mr. Journey ran the other, and they were
10 going to split the profit 50/50.

11 And I would point out to the Court that while Mr. Bias is
12 on tape saying that he would be satisfied with 12 patients a
13 day at his clinic, it was actually Mr. Journey who was making
14 money on the side by sponsoring patients to those clinics. It
15 was Mr. Journey who, when he got caught, basically flipped and
16 pled out. Mr. Journey has purportedly admitted his
17 wrongdoing, and he has cooperated with the government and,
18 with the same sentence guidelines, was sentenced to five
19 years.

20 Now, Mr. Bias has admitted his wrongdoing. He has
21 cooperated with the government. He, too, met with
22 government's agents, testified at trial, and the government is
23 trying to give him a sentence that's four times that of
24 Mr. Journey's.

25 We're requesting a sentence that is more like that

1 contemplated by the Plea Agreement, a sentence of no more than
2 ten years, which, I would point out, is twice that of what was
3 given to Bart Journey.

4 THE COURT: Let's -- before I ask Mr. Oakley to
5 speak, I mean, I think the key provisions I'll ask you guys to
6 agree or disagree, but paragraph 6 indicates that if the
7 government determines he has not complied with the terms of
8 the agreement, they may move for sentencing enhancements --
9 I'm paraphrasing now -- which may have been in the PSI, which
10 they have done through their Sentencing Memorandum.

11 The seventh paragraph is little bit more subjective. It
12 requires complete and honest testimony.

13 And then in paragraph 16, the defendant acknowledges that
14 after my full understanding of all the facts and
15 circumstances, I could review the offense factors that are
16 previously outlined, and if I determine them not appropriate,
17 I am not obligated to accept such. At that point, he has no
18 right to withdraw his plea.

19 So we've got all of that swirling around, so I'll as ask
20 Mr. Oakley for his comments on this.

21 MR. OAKLEY: Thank you, Your Honor. First, I'm not
22 sure that what I heard was an objection, a proper objection,
23 but more of a mitigation. We don't believe it was a proper
24 objection, if that's what was the case.

25 To discuss now, if the Court wants, the Plea Agreement or

1 the cooperation, I'll be glad to do that.

2 THE COURT: Can I ask one question? I don't have a
3 copy of the plea transcript in front of me. Oftentimes, if
4 there is a contemplated agreed-upon sentence I will make some
5 comments regarding that. Did I make such comments in this
6 case?

7 MR. OAKLEY: It was not an agreed-upon sentence, Your
8 Honor.

9 THE COURT: Okay. Okay.

10 MR. LINK: You did, Your Honor.

11 THE COURT: And what did I say?

12 MR. LINK: Hold on, just a moment here.

13 This is the Court speaking:

14 "A couple of things that go into the mix on that. The
15 Plea Agreement contemplates that you guys are agreeing the
16 appropriate guideline level is 37. That means something to
17 you and your lawyer, and I'm sure he has explained what that
18 means. There is also a provision in there where the
19 government has indicated that because you entered the plea,
20 you should get two levels off that for acceptance of
21 responsibility. If that cooperation continues through the
22 time of the sentencing, there would be another level taken
23 off, which would take you down to a 34."

24 Hold on just a second. And I'm trying to find the exact
25 place where they speak about the ten-year cap.

1 THE COURT: That's what I was curious.

2 MR. OAKLEY: It would have been in the plea colloquy,
3 Your Honor.

4 THE COURT: Right. I mean, I would have had a
5 discussion.

6 MR. OAKLEY: Yes, sir.

7 MR. LINK: I apologize, Your Honor.

8 THE COURT: That's okay.

9 (Pause in proceedings.)

10 MR. LINK: It's right above that on page 14, I'm
11 sorry, Your Honor, beginning at line 2.

12 "They've" -- referring to the government -- "also
13 indicated that if they seek your cooperation in this matter
14 and you provide honest and truthful testimony" -- and I would
15 point out that Mr. Bias testified at trial -- "they will not
16 look for a sentence of more than ten years."

17 I'd also direct the Court's attention to paragraph --

18 THE COURT: So my question on that -- I mean, you
19 guys have had pleas with me before. I sometimes focus in a
20 little bit more on that, but it seems like I clearly caption
21 that in terms of the truthful and honest testimony at this
22 point, and I didn't make any promises to Mr. Bias where he
23 would end up.

24 MR. LINK: That is correct.

25 THE COURT: Do you agree with that?

1 MR. OAKLEY: Yes, sir.

2 THE COURT: All right.

3 MR. LINK: Your Honor, I would point to paragraph 5
4 of Plea Agreement, though, which sets this agreement apart
5 from others. This isn't simply a circumstance where the
6 government has agreed to ask for more than ten years if it
7 found Mr. Bias didn't cooperate.

8 At paragraph five, it says, "In the event that the
9 defendant fails to provide complete cooperation as determined
10 by the United States, the defendant and the United States
11 understand and agree that the defendant has violated the terms
12 of this agreement. The defendant further understands that the
13 United States will move that the plea and plea offer be
14 withdrawn and the defendant will face the charges as set forth
15 in the entire Indictment."

16 Now, that reading means, Your Honor, that the government
17 has agreed to either move to withdraw this plea if it found
18 Mr. Bias didn't cooperate or it requests a sentence of no more
19 than ten years if determine he did --

20 THE COURT: How do you reconcile that with paragraph
21 6 that says that if they make a determination that he has not
22 complied with the terms of the Plea Agreement, they may move
23 to avoid the enforcement of the Plea Agreement and they may
24 use the sentencing enhancements? That seems to be what he has
25 done in the Sentencing Memorandum.

1 MR. LINK: I would read that as a conjunctive with
2 paragraph 5, so that they wouldn't require under the Plea
3 Agreement to move to withdraw the Plea Agreement, and then
4 they also may apply for sentencing enhancements that may be
5 applicable in the case.

6 Here we have a Plea Agreement, and they've basically moved
7 for all the enhancements that can be made. The Probation
8 Department's made all the enhancements that can be made. And,
9 most importantly, no motion was filed.

10 I mean, it was -- as we've already said, Your Honor,
11 Mr. Bias' statements and story hasn't changed since a year ago
12 prior to entering this Plea Agreement. It's been consistent
13 with the Statement of Facts that was agreed to by Mr. Bias and
14 the United States. The government could have at any time
15 said, "We don't believe you, and we're withdrawing. We are
16 moving to withdraw your plea. You are back to square one."

17 But it didn't. Instead, they continued to work with him
18 and continued to meet with him, and ultimately asked him,
19 called him to testify, required him to testify in open court
20 in a federal trial, and he did.

21 The motion was never filed prior to that, and it's too
22 late to file that motion now, Your Honor, under the terms of
23 the Plea Agreement, which, again, is read like a contract.
24 They were required to do one or the other.

25 THE COURT: Mr. Oakley.

1 MR. OAKLEY: First of all, Your Honor, I would like
2 to complete paragraph 5. It starts with he understands that
3 the United States will be the sole determiner of whether or
4 not he has truthfully complied with his obligation to
5 cooperate as set forth in the plea. The United States retains
6 the right to be the sole determiner as to whether or not
7 Mr. Bias has told us the truth and fully cooperated.

8 I guess the -- you know, we're now left with a request to
9 either withdraw the guilty plea and proceed to trial on all
10 charges or just simply let this case go and receive a
11 substantial sentence and not waste the Court's time.

12 We take exception to a couple of other things that was
13 said. We did not seek any enhancements that were not -- we
14 did not seek all the enhancements. He was clearly the
15 leader/organizer. We didn't seek enhancement for the death.
16 We didn't seek enhancement for the causing of injury to other
17 patients. We have done that in the past, Your Honor. We have
18 done that in other cases.

19 So to claim that we have misrepresented anything, quite
20 frankly, is just not accurate, and we would take exception.

21 What we would tell the Court is that while the United
22 States was negotiating in good faith, I find it ironic to be
23 blamed for not being in good faith when the person who was
24 surreptitiously meeting with a co-defendant, Steven Hillman,
25 was Tracy Bias. They were going through what was a sealed

1 Statement of Facts and changing it to remove parts that
2 involved Steven Hillman's involvement in the clinic. That's
3 what was going on.

4 And I have to give Mr. Keller and Mr. Link credit. They
5 didn't know it either. They told us afterwards. There were
6 several drafts of the Plea Agreement made. The first removed
7 the Trinity ownership. The Court heard the trial that
8 ownership was -- the denial of ownership was bizarre, to say
9 the least. There was testimony he would be sent and he --
10 Mr. Bias would be going up and visiting the clinic on a daily
11 basis or close to a daily basis. They were checking the
12 receipts. He had asked Dr. Lassiter to get information on the
13 patients so that he can keep track of what was going on.

14 And then after that was removed, after the meeting of
15 Mr. Hillman and Mr. Bias, the part about John Dahlsten's DEA
16 registration number was removed at the time of the plea, that
17 was the second change. This was after another meeting with
18 Mr. Hillman, which, again, no one here knew.

19 The United States was acting in good faith. I believe
20 Mr. Link and Mr. Keller were acting in good faith. Mr. Bias
21 was not.

22 THE COURT: What's your assessment of -- you and the
23 agents' assessment of his testimony at trial?

24 MR. OAKLEY: We found a lot of it to be confusing,
25 contradicted by other evidence, especially knowing that it was

1 changed after meeting with Mr. Hillman. We had reservations
2 about it. I don't know what was true and what was not. I
3 know that the only people that were not surprised by some of
4 the testimony was Mr. Bias and Mr. Hillman.

5 THE COURT: Tim, I don't want to go too deeply into
6 this, but did Mr. Bias proffer anything before he met with
7 Mr. Hillman, or how did all that work?

8 MR. OAKLEY: We had talked, and then we talked after
9 the change of plea. Admittedly, it got rather heated as to
10 what we were hearing. We finally -- we had been trying to put
11 together why it was changed. We met before. And after we
12 found out that there had been these meetings, it was changed.
13 We confronted Mr. Bias, and he just simply did not make sense.

14 THE COURT: Did he ever fess up to these meetings?

15 MR. OAKLEY: No, no. I would say in proffers he did
16 admit to sponsoring patients before. They were going to
17 Florida to see the doctor, and that's where they came up with
18 the idea of going to Portsmouth and open up their clinic.

19 I guess if we segue into that, because of a number of
20 things that were said, this was a clinic that was opened up
21 late in the pill game. This was opened up in '09 or
22 thereabouts. By then, we had already had multiple clinics
23 investigated, prosecuted, searched. This was not, you know,
24 at the request of Bart Journey. This was an active, ongoing
25 conspiracy with Mr. Bias at the helm also.

1 You know, they got tired of going to Florida because of
2 the travel. Mr. Bias had a Florida driver's license. They
3 came up here to sell pills to people. That's what happened.
4 And then Mr. Hillman, he just simply changed his story in
5 secret meetings.

6 The good faith was with the United States, at least at the
7 time of the plea, or the good faith was with the United
8 States, period, in trying to get to the bottom of this. To
9 claim that we are not acting in good faith, I think, is
10 ironic, as the only person who acted in bad faith was Mr. Bias
11 with meeting in secret with Mr. Hillman.

12 I can go on, Your Honor, but I'm not sure that --

13 THE COURT: No. I mean, so what you are telling me
14 at this point in time is that based upon you and your agents'
15 assessment, he did not comply with being completely honest and
16 giving you complete information as relates to this event, so
17 you would say he has not lived up.

18 MR. OAKLEY: Your Honor, he has hedged. He has not
19 provided complete and accurate testimony as required by the
20 entirety of the plea at the discretion of the United States.
21 We have tried to get to the truth, and some of what he said
22 just simply continues not to make sense.

23 THE COURT: Okay.

24 MR. KELLER: Your Honor --

25 THE COURT: Yeah. How do you respond to that?

1 MR. KELLER: Mr. Oakley can correct me if I'm in
2 error, but Mr. Link and I went to a meeting with the U.S.
3 Attorneys where both agents were present that are in court
4 today.

5 THE COURT: Right.

6 MR. KELLER: Mr. Oakley was there, and Ms. Glatfelter
7 was there. I don't know the exact date of that meeting, but I
8 believe it was at that meeting in the hall before we went in
9 to speak with them that Mr. Bias acknowledged to us that he
10 had, in fact, shared an earlier draft of a Statement of Facts
11 with Mr. Hillman. And that was -- well, came as a total
12 surprise to Mr. Link and I, but Mr. Bias did make that
13 disclosure. And I believe then that it was discussed with the
14 government parties at that conference which was all part and
15 parcel of preparation for trial and Mr. Bias' testimony.

16 And so all of that was known as to how it all changed -- I
17 think that's a little fuzzy. There was no proffer that had
18 proceeded any of that, to my knowledge.

19 MR. LINK: Your Honor, I would add that, of course,
20 our ethical obligations would prohibit us from sharing
21 anything --

22 THE COURT: I get that.

23 MR. LINK: -- without Mr. Bias' permission. It was
24 up to Mr. Bias that instructed us to let them know about his
25 conversations with Mr. Hillman in an effort to be forthright.

1 THE COURT: In any event, do you agree with the
2 language in the Plea Agreement that says after investigation
3 and review the Court may determine the offense factors and
4 recommendations are not appropriate and do not have to accept
5 such, and in that event he does not have the right to withdraw
6 his plea? So do you agree the ball is back in my court no
7 matter which way I go on this?

8 MR. LINK: I do agree, Your Honor.

9 THE COURT: Okay. Is there anything else we need to
10 talk about at this time?

11 MR. OAKLEY: Your Honor, I thought I was clear, but I
12 do agree with Mr. Keller: they did bring it to our attention.

13 THE COURT: Okay.

14 MR. OAKLEY: I would also note that, again, the
15 Statement of Facts was changed at the time of the plea taking
16 out Mr. Dahlsten's conversations, that the agent spoke to
17 Mr. Dahlsten and Mr. Bias about the lack of a license for
18 Dr. Dahlsten to write the prescription. That was taken out.
19 And I believe that was another meeting with Mr. Hillman.

20 MR. LINK: And as to that, Your Honor, it's
21 interesting that that point is brought up because although I
22 wasn't here for that plea colloquy, I have read the
23 transcripts. Mr. Bias objected on the basis that he didn't
24 know Dahlsten's license was expired. Now, of course, what
25 happened is the DEA contacted the clinic and informed Mr. Bias

1 that, in fact, Dr. Dahlsten's license had expired.

2 Mr. Bias still has a difficulty understanding that that
3 gives him actual knowledge, that the DEA calling and letting
4 him know that a license, a DEA license was expired gives rise
5 to actual knowledge on his behalf. It's these semantic issues
6 that suggest Mr. Bias' lack of sophistication.

7 I mean, what's happening here is that Mr. Bias simply
8 isn't as sophisticated as the government would make him out to
9 be. While that makes him no less culpable for the conduct at
10 issue, it certainly makes him no less cooperative either.

11 I understand that a conspiracy knowledge is imputed to all
12 the participants and they can be held accountable even for
13 things that they didn't actually know about, but to say that
14 he didn't cooperate because he was unable to elucidate things
15 that he doesn't actually have knowledge of is --

16 MR. KELLER: Judge, unrelated to this case, one other
17 issue. I was contacted through Mr. Oakley by an agent in
18 Kentucky, an Agent Dalrymple, who was conducting an
19 independent investigation, the nature of which I don't fully
20 know. But in an effort to continue to cooperate, and this is,
21 I believe, after the trial, we did meet and had a video
22 conference with two agents in Kentucky, two DEA agents. I'm
23 just suggesting to the Court that there was a continuing
24 cooperation.

25 THE COURT: But nobody is asking for a 5K.

1 MR. OAKLEY: I was contacted by an Agent Dalrymple.
2 I put him in contact with Mr. Keller. I have not heard since
3 then of anything that was done or is going to be done. I have
4 no idea of what has happened with that investigation.

5 MR. KELLER: Judge, nor do I. I just want the Court
6 to be aware that he did, again, cooperate.

7 THE COURT: Okay. I understand.

8 All right. So here's where I am on this. I'm going to
9 sustain at this time the total offense level of 37 and
10 Criminal History Category of II. However, in terms of a
11 variance, I'm going to consider my discussion with Mr. Bias in
12 the Plea Agreement regarding a 34 as well as my discussion
13 with the suggested cap. I'm not at this time saying exactly
14 where that comes out, but that will be taken into
15 consideration before the pronouncement of sentence.

16 So does anybody think they have to clarify anything on the
17 record before we move forward?

18 MR. OAKLEY: The only other thing I guess I would
19 add, Your Honor, is the discussion about Mr. Journey, the
20 guidelines for the same calculations. Mr. Journey did
21 multiple things in multiple cases and also had serious medical
22 issues and received the sentence recommended by the United
23 States. It has no bearing on what Mr. Bias did as far as his
24 conduct with the United States.

25 THE COURT: I'm not sure I completely agree with

1 that, Tim, because I think I do look at other similarly
2 situated defendants and try to find out how they are similarly
3 they are situated. For both sides I will consider
4 Mr. Journey's ultimate sentence at arriving at a sentence in
5 this case because I have thought about that before.

6 All right. Other than what we've already talked about, is
7 there anything in the PSI that's disputed by defendants?

8 MR. LINK: No, Your Honor.

9 THE COURT: Tim?

10 MR. OAKLEY: No, Your Honor.

11 THE COURT: All right. That being the case, I'm
12 going to adopt the findings of fact as contained in the PSI as
13 my own, of course with the limitation on the death. I'm not
14 going to involve myself in that.

15 So I find that the defendant has entered a valid plea to
16 Count One of the Superseding Indictment, which is a violation
17 of 21 U.S.C. 841(a)(1). He's exposed to 20 years'
18 imprisonment, a million-dollar fine, at least three years on
19 supervised release and up to life if possible, and a
20 one-hundred-dollar special assessment. We have already talked
21 about where the calculations would lead us in this case.

22 Before we move into the actual discussion with the
23 defendant and counsel and the government, is there anything
24 anybody else needs to place of record at this time as to
25 objections or whatever you think you need to make for the

1 Court of Appeals record? Either side.

2 MR. LINK: Solely, Your Honor, that we would request
3 further reductions from the sentencing level in this case due
4 to Mr. Bias' own health conditions.

5 THE COURT: Well, we'll talk about that in just a
6 second. I'm talking about the actual reports and the
7 statutory sentences as to calculations.

8 MR. LINK: No, Your Honor.

9 THE COURT: Mr. Oakley, anything?

10 MR. OAKLEY: No, sir.

11 THE COURT: That being the case, guys, do you have
12 anything you wish to say in anticipation of the sentence or
13 mitigation of the sentence, and does Mr. Bias wish to say
14 anything at this time?

15 MR. LINK: Your Honor, I believe that we've covered
16 most everything already. I would go back to the sentence
17 disparity in this case between the proposed sentence and that
18 of Mr. Journey. Again, this was a model that Mr. Journey had
19 had in place at other clinics in the area working with his
20 brother, David Michael Journey. This is a business model that
21 he brought to Mr. Bias' attention and solicited Mr. Bias'
22 participation. It was Mr. Journey who was sponsoring patients
23 not only at these clinics but at other clinics in the area,
24 and he's gotten five years.

25 We are asking, Your Honor, that the government would

1 further reduce the level possibly from a 34 all the way down
2 to a 30 due to Mr. Bias' failing health, what we believe to be
3 his overstated criminal history, and the assistance he has
4 given to the government.

5 In the alternative, Your Honor, we'd asked for a downward
6 departure from the guidelines as to impose a sentence of no
7 more than ten years. That was contemplated by the Plea
8 Agreement and, again, that would be twice that of what was
9 given to Mr. Journey.

10 THE COURT: Since you mentioned health, the Probation
11 Department's addendum indicates he does have chronic back
12 pain, I guess from the neck injury, back and neck injury. He
13 has high blood pressure. He has an abscess that's being
14 treated, and I don't know exactly what the status of that is
15 now.

16 It does seems like that would be something that will be
17 cleared up just with due course; right?

18 MR. LINK: Yes. And that is an addendum to what was
19 actually contained in the presentence investigation report
20 itself.

21 In the presentence investigation report, it goes into a
22 little more detail about his medical issues. There is mention
23 of the surgery to remove the abscess at the base of his spine.
24 He previously suffered a crushed pelvis and hip which gives
25 him chronic pain conditions and necessitates the use of a cane

1 while he walks. He also has chronic high blood pressure; high
2 cholesterol; bleeding in his spine that the doctor believes
3 may be cancer; and I'm sorry for saying this in open court,
4 but a knot between his scrotum and his rectum that needs to be
5 evaluated; a 61 percent blockage of the left side of his
6 heart; Class 3-4 angina; and a partially reversible defect in
7 the interior wall of his heart for which a cardiac
8 catheterization has been recommended.

9 THE COURT: I mean, at some point he was supposed to
10 take some medication for the heart issues, but he just doesn't
11 do it.

12 MR. LINK: Well, he has very limited assets, Your
13 Honor, and no health insurance. He has had a hard time coming
14 up with the money to get the medications recommended.

15 THE COURT: Okay.

16 John, is there anything you want to say?

17 MR. KELLER: Nothing further, Your Honor. I believe
18 it has been covered.

19 THE COURT: Tracy, now is your opportunity to tell me
20 anything that you think I should know before I hear from the
21 government.

22 THE DEFENDANT: Well, Your Honor, I'm very sorry that
23 I ever got into this mess to start with. I do hate what has
24 happened, not just because I'm in trouble but I do hate what
25 it has done to other people, other families. And words cannot

1 change it, but I would just like for you to know that I am
2 sorry.

3 MR. LINK: Your Honor, I'd like to add one thing
4 about Steve Hillman. As everyone is aware in this case,
5 Mr. Bias and Mr. Journey did enlist the services of Attorney
6 Steven Hillman in this case early on in the life of these
7 clinics.

8 Now, if I may say so, any attorney worth his salt would
9 have told Mr. Bias, as a nonphysician and with a criminal
10 history, to stay away from this, just get away from it.
11 Unfortunately, that's not the advice he was given.
12 Mr. Hillman did seize the opportunity and instead got himself
13 a \$10,000-a-month retainer to advise Mr. Bias in how to skirt
14 and essentially evade the law. Mr. Bias understood it to be
15 how to comply with the law, but while some attorneys will
16 advise their clients in an abundance of caution, there are
17 those that would basically advise them how to do things they
18 shouldn't be doing.

19 These clinics did generate money, and it was more money
20 than Mr. Bias had ever seen in his life. Unfortunately, the
21 allure of that money did cause Mr. Bias to do some stupid
22 things. As he's said to the Court here, he is aware of the
23 stupid decisions that he has made.

24 Unfortunately, he had surrounded himself with the likes of
25 Mr. Journey and Mr. Hillman who had their own interests in

1 mind, if I may say so.

2 THE COURT: Anything else, guys?

3 Okay. On behalf of the government, Mr. Oakley?

4 MR. OAKLEY: Yes, sir. Thank you.

5 First, Your Honor, I know it's fashionable to blame other
6 people who are not seated at the defense table, that somehow
7 it's their fault for his actions. But Mr. Bias was traveling
8 before he opened up this clinic to Florida to obtain pills, to
9 sell pills, was sponsoring people to obtain pills and sell
10 those pills. So to now be upset that what his actions have
11 contributed to in Southern Ohio, Your Honor, I would hope
12 would fall on a deaf ear.

13 Like I said, he started this clinic fairly late in what
14 we've called a pill tsunami that just devastated Southern
15 Ohio, and Scioto County in particular, where people were dying
16 on a daily basis due to opiate addiction and overdose. He got
17 into this at a time where the United States has already
18 prosecuted a number of clinics, a number of doctors, already
19 conducted a number of search warrants. So the pill problem
20 obviously was not new in Portsmouth and obviously was known to
21 Mr. Bias because he was traveling at great lengths, despite
22 his physical ailments, to obtain and sell narcotics.

23 So to blame Mr. Journey now for that, Your Honor, I think
24 is not quite accurate. Mr. Bias was more than a willing
25 participant and more than a willing gatherer of the cash that

1 was generated. We have estimated, Your Honor, in a
2 preliminary forfeiture, of approximately \$6.7 million that was
3 illegally generated by Mr. Bias and Mr. Journey.

4 Their sentence that was recommended before the departures
5 was similar. They were sentenced to roughly the same
6 guideline range. Mr. Journey testified in Mr. Hillman's case,
7 as did Mr. Bias. They also testified in the Sadler matter.

8 The Court is aware of Mr. Journey's serious ailments that
9 are currently being handled by the Bureau of Prisons. The
10 same with Mr. Bias: what he has can be handled by the Bureau
11 of Prisons. So it does not warrant a downward departure based
12 on his physical health.

13 Now, as to Mr. Hillman, we'd love to get to the truth of
14 what actually was going on.

15 We would note that at trial Mr. Bias, due to the lateness
16 of the operation in the area, local pharmacies were not
17 honoring his prescriptions or prescriptions that came from
18 these clinics. So to get around that, Mr. Bias simply opened
19 up two unlicensed dispensaries, one in each place: one on
20 Eleventh Street and one on Findlay. He loaned Dr. Fantauzzi
21 \$17,000 to begin a dispensary to subvert the need for outside
22 physicians to review these prescriptions. Dr. Chong opened up
23 a dispensary, unlicensed, in the Eleventh Street clinic that
24 generated a large amount of cash. Again, the purpose was to
25 subvert the need for an outside, unbiased, for lack of a

1 better word, set of eyes on what was going on. You couldn't
2 stay in business without these dispensaries being open.

3 When those were shut down, Your Honor, by law enforcement,
4 Mr. Bias then engaged in a business transaction with
5 Mr. Hillman, providing him approximately \$220,000 in cash,
6 again secretly, for Mr. Hillman to open up or try to open up a
7 pharmacy in Piketon, Ohio. The Court has heard the testimony
8 about that. Piketon is a small town in the middle of Route
9 23.

10 Oddly enough, that money wasn't even registered as any
11 type of loan. We saw an unsigned promissory note for \$138,000
12 that Mr. Bias gave to Mr. Hillman with no way to collect.

13 We also learned from the trial that another \$75,000 in
14 cash was provided without any type of agreement, signed or
15 unsigned, that showed the dispensing of this cash.

16 So it's our opinion that the cash was meant to be hidden,
17 that it was hidden, and it was intended to open up a pharmacy
18 to allow Mr. Bias to stay in business distributing these pills
19 in this area affecting and killing individuals.

20 That's why we have recommended the sentence that we had.

21 I know the Court's concerns about guideline ranges. To
22 Mr. Bias' credit, we did not have to exhaust resources with
23 him. He did plea. Like I said, we are concerned that he
24 hedged what he said. Much of what he said didn't make sense
25 when you look at the facts and the testimony of the other

1 witnesses.

2 But, Your Honor, you know, he was not a lamb led into the
3 slaughter by Mr. Journey. He was well aware of what was going
4 on and fought hard to stay in business despite the devastation
5 that was taking place in Southern Ohio, and we'd ask the Court
6 to sentence accordingly.

7 THE COURT: Okay. Anything else?

8 (No response.)

9 THE COURT: All right. Pursuant to 18 U.S.C.
10 3553(a)(4) and (a)(5), I have to impose a sentence which is
11 consistent, as I deem appropriate, with the guideline
12 imprisonment range and consistent with the possible sentences
13 in this case but also reflects the nature and circumstances of
14 this offense.

15 We've been through this a number of times, a number of
16 co-defendants, but the defendant's co-conspirators operated
17 these clinics that we talked about. They dispensed
18 prescriptions for pain medication to persons who had no
19 medical need for it. They were basically feeding addictions
20 of many hundreds of people. The number of pills prescribed
21 were in the thousands, if not millions. The defendant also
22 helped sponsor other people in terms of filling prescriptions
23 and setting up other clinics, and he did make the financial
24 investment that Mr. Oakley spoke about just a moment ago.

25 As mentioned by defense counsel, he was raking in

1 thousands of dollars, and he was exposing the community to
2 what has been described as an OxyContin plague in the Southern
3 District of Ohio, specifically in the general Portsmouth area,
4 so I have to take that into consideration.

5 In terms of his personal criminal history and
6 characteristics, for a drug dealer of this magnitude they are
7 not that significant. There are some brushes with the law and
8 a couple of various deals in Kentucky and on this side of the
9 river. However, he has had prior involvement with marijuana.
10 He is no stranger to the illegal side of life, but he is not
11 as severe as demonstrated by the Roman numeral characteristic
12 II that comes with that.

13 So the sentence that I have to impose has to promote
14 respect for the law and provide just punishment.

15 Mr. Journey and Mr. Bias each showed absolute disrespect
16 for the law and, in fact, I think have demonstrated over a
17 period of time that they thought they were above it at other
18 times. So I have to impose a sentence which provides adequate
19 criminal deterrence and protects the public from potential
20 future endeavors. Both individuals have demonstrated
21 unwillingness to disengage in criminal activity.

22 I am troubled by several things. One is the disparity in
23 sentencing between Mr. Journey and Mr. Bias, so I'm going to
24 take that into consideration. The other is the plea colloquy
25 where I discussed Level 34, and also we discussed the

1 potential cap of ten years. But I believe I've made it clear
2 in the situation that, consistent with the terms of Plea
3 Agreement, I am not bound to follow either of those two
4 recommendations if, in fact, the facts and evidence bear out
5 not following those.

6 I watched Mr. Journey testify. I watched Mr. Bias
7 testify. I was not impressed by either one of those gentlemen
8 in terms of their candor on the witness stand.

9 So I am taking all of those facts into consideration.

10 I'm going to impose a sentence of 168 months in the Bureau
11 of Prisons.

12 There is going to be a fine. Depending on how counsel
13 feels, I have had defense counsel at different times believe
14 that a fine has assisted in terms of placement in a prison or
15 potential employment opportunities; I have had other defense
16 counsel indicate that a fine has not been helpful to their
17 incarcerated clients. In the past what I have done is impose
18 a small fine and then indicated to counsel that if it ends up
19 backfiring, you can file a motion and I will obviate it at a
20 later date.

21 But I will leave it up to you guys whether or not a fine
22 would be helpful or not. I don't know if you know.

23 MR. KELLER: In all fairness, I don't know that I can
24 answer that.

25 THE COURT: All right. What I'm going to do then,

1 I'm going to impose a fine of \$2500. If, in fact, that
2 becomes a hindrance on the prison account or does not help him
3 in terms of inside-institution employment opportunities, he
4 can contact you guys, file a motion, and I'll waive the fine.

5 The fine will be paid at \$25 a quarter while he's
6 incarcerated if he's working in a non-UNICOR or Grade Five
7 job, and up to 50 percent if he's working in a One to Four
8 job.

9 If there is an unpaid balance at the time of his release,
10 I'm not going to schedule a payment. I'll waive it at that
11 time so any unpaid balance will be taken care of.

12 All right. The recommended term of supervised release is
13 three years. Consistent with Mr. Bias and Mr. Journey's
14 predilections for not complying with the law, I'm going to
15 make a term of supervised release in this case of ten years.

16 He is to report upon his release within 72 hours to the
17 Probation Department in the district within which he intends
18 to reside.

19 He will be given the standard terms and conditions of
20 probation, which are basically the same as they are for
21 supervised release, including not committing any federal, state
22 or local crimes.

23 He's prohibited, not only during the term of supervised
24 release but from here on out, from possessing, owning or using
25 a firearm or dangerous ordnance.

1 Obviously he's not to be involved in illegal controlled
2 substances. There will be drug-testing in 15 days and at
3 least two tests thereafter. There is some history of alcohol
4 abuse. If the Probation Department determines that an alcohol
5 or drug assessment is appropriate, he will comply with
6 whatever they ask him to do and will follow whatever
7 recommendations they make in that department.

8 The one-hundred-dollar special assessment is owing and
9 due, as is the collection of a DNA sample.

10 Forfeiture pursuant to 18 U.S.C. 853 is also granted.

11 MR. LINK: Your Honor --

12 THE COURT: Barb, you got anything?

13 COURTROOM DEPUTY: There was a recommendation for
14 some mental health treatment.

15 THE COURT: I think that goes with the alcohol
16 counseling. So if the Probation Department feels he needs
17 some mental health and alcohol counseling, he will deal with
18 that based upon their recommendation at the time.

19 Anything else?

20 COURTROOM DEPUTY: And can you just confirm again
21 what the supervised release term is?

22 THE COURT: Ten years.

23 COURTROOM DEPUTY: Ten years. All right.

24 THE COURT: Anything else, counsel?

25 MR. LINK: Your Honor, I'd like to have a moment to

1 address the order of forfeiture, if we might?

2 THE COURT: Sure.

3 MR. LINK: Your Honor, the government -- I believe
4 Mr. Oakley misspoke when he mentioned \$6.7 million allegedly
5 generated by this business. What the order has asked for is
6 \$6,348,000.00, I believe, and that estimate has been obtained
7 by essentially making a hypothetical estimate of revenues.
8 They are estimating for two clinics 30 patients a day, five
9 days a week at \$200 a patient.

10 THE COURT: Let me ask you this, Tim. Have you guys
11 filed the preliminary forfeiture order yet or not?

12 MR. OAKLEY: Yes, we have. It's been signed by the
13 Court.

14 THE COURT: Go ahead. Sorry.

15 MR. LINK: It's quite all right, Your Honor.

16 However, even assuming, without disputing any of the
17 numbers, the 30 patients a day or \$200 a patient, that number
18 would represent the gross proceeds of this business. Now,
19 from those gross proceeds, of course, each of the doctors were
20 paid at a base salary of \$26,000 per month. All of the
21 employees of the clinic were paid. None of that money is
22 being disgorged. The clinics were both paying rents, their
23 utilities, their supplies and, of course, the \$10,000 a month
24 that was given to Mr. Hillman. Then the net proceeds of those
25 proceeds were split 50/50 between Mr. Bias and Mr. Journey.

1 I've actually prepared, if I may, Your Honor --

2 THE COURT: Sure.

3 MR. LINK: -- just a brief --

4 THE COURT: Just hand a copy over to Mr. Oakley.

5 MR. LINK: Of course.

6 -- a brief selection with some of my own rough math, again
7 using the numbers provided by the government as far as the
8 months, the duration each of these clinics were opened. The
9 salary calculation is actually taken from the motion for
10 forfeiture on Dr. Chong.

11 THE COURT: Let me ask you this. Tim, has the
12 government started the levy against any of this yet?

13 MR. OAKLEY: We have. I think there is --

14 THE COURT: Have or have not?

15 MR. OAKLEY: We have. I think there is an action
16 against the 43,000 in the vehicle.

17 THE COURT: Oh, that was the issue we went through
18 with Hillman; right?

19 MR. OAKLEY: Yes.

20 THE COURT: Um, let's do this. Other than that,
21 let's give counsel 30 days to put together a motion in
22 opposition to the forfeiture amount calculated, and then we
23 can deal with that. Is that okay?

24 MR. OAKLEY: That's fine.

25 THE COURT: All right. So is that okay, guys, 30

1 days?

2 MR. LINK: Yes, it is, Your Honor.

3 THE COURT: Okay. Now we've got a couple of
4 questions in terms of two issues: one is self-surrender and
5 the other is location. Anything to be heard on that?

6 MR. KELLER: Judge, with regard to the first, we
7 would ask for self-surrender and just indicate to the Court
8 that he has been on pretrial release for an extended period of
9 time. To my knowledge, there have been no issues that have
10 been brought to the Court as to noncompliance with all of the
11 requirements that he has had. So at this point I would just
12 ask the Court to allow the self-surrender in light of that
13 representation.

14 THE COURT: Keith, you're in the back; right? Is
15 there any issues in terms of his compliance in terms of
16 conditions of release at this point in time?

17 OFFICER MANFRA: Your Honor, we've had no issues with
18 Mr. Bias. He has complied with everything we have directed
19 him to do. Pretrial does have some concern about the elevated
20 risk with the amount of time that he has been given.

21 THE COURT: Okay. Has he been on EMU or anything
22 like that?

23 OFFICER MANFRA: He was on a GPS unit --

24 THE COURT: Starting out.

25 OFFICER MANFRA: -- supervision and was taken off of

1 that with his compliance.

2 THE COURT: Okay. I'm thinking maybe if we do a
3 self-surrender we could reinstitute the EMU during that period
4 of time, or would that be a problem?

5 MR. OAKLEY: Your Hoor, we would -- if the Court is
6 entertaining a self-surrender, we would oppose it for multiple
7 reasons.

8 One, there is no guide right now on Mr. Bias because that
9 has been removed.

10 There is also a substantial amount of assets that are
11 unaccounted for. Even using Mr. Link's amounts, which I don't
12 believe are complete, there's almost \$2 million out there that
13 we've never found. He has the assets. He has been living in
14 other states with other driver's licenses.

15 We would ask that he be detained now. Failing that, we
16 would ask that he be placed on electronic monitoring with a
17 curfew, that there is no need for him to be traveling around.

18 THE COURT: I'm trying to -- this goes back. Refresh
19 -- didn't we have a problem with electronic monitoring before?
20 Weren't there some violations way back when, or am I thinking
21 of someone else?

22 OFFICER MANFRA: Your Honor, I'm not aware of any
23 violations of any location monitoring before when he was on
24 that. He was on a GPS unit. I do not believe they have a
25 home phone line at the residence, so it would take a day for

1 us to get the equipment.

2 THE COURT: What's the situation on the multiple
3 driver's license?

4 MR. OAKLEY: He had a Florida driver's license while
5 he was living up here. I don't want to misstate, but I
6 believe they had a condominium.

7 MR. LINK: Not that it amounts to anything, Your
8 Honor, but it was actually just a Florida state identification
9 card. It doesn't amount to a hill of beans.

10 MR. OAKLEY: Well, it amounts to fraud if he wasn't
11 there.

12 MR. LINK: Same thing one way or the other. It's an
13 out of state --

14 THE COURT: Guys, this is about whether or not he can
15 be trusted to show up for his term of incarceration, which
16 normally takes about 45 to 60 days to get a location. Do you
17 have anything on the location itself? Close to home or --

18 MR. KELLER: Judge, I would want it to be close to
19 home. He has multiple family members that are here and have
20 been supportive. And there are -- in spite of what Mr. Oakley
21 is representing, as far as we know Mr. Bias has limited
22 sources of income and, quite frankly, has put himself at risk
23 medically by putting off surgeries that we talked about when
24 we first met him and it was a problem, and only in the recent
25 past did he have that surgery. I think he's allowed himself

1 to deteriorate. I don't believe he is suicidal. I think he's
2 just made a decision because of finances, and I think he has
3 shown himself to be reliable to the extent that he has fully
4 complied, he's always come to our office, he's always
5 contacted us, and he's been to every court proceeding. As
6 Mr. Manfra says, there is no reason to suspect that that
7 wouldn't be the same.

8 THE COURT: Well, I mean, things do change.

9 Keith, how long -- do you need Mr. Bias to organize
10 whatever you've got, the GPS?

11 OFFICER MANFRA: It would not require him to do
12 anything. We would just have to get the equipment in by our
13 provider.

14 THE COURT: How long will that take?

15 OFFICER MANFRA: I can have it by tomorrow.

16 THE COURT: Okay.

17 I'm going to hold him overnight. All right? When Keith
18 tells me that he's got the mechanical stuff ready to go, then
19 I'll release Mr. Bias. I don't want him untethered because of
20 the significant sentence he's facing. So when Keith reports
21 that he is good to go, that will be the deal.

22 Does that work with you, Keith?

23 OFFICER MANFRA: Yes, Your Honor.

24 THE COURT: And you can make the restrictions as
25 tight as you want: curfew; whatever; not leave the residence.

1 Anything you want to do, make sure you've got him bundled up.

2 All right?

3 OFFICER MANFRA: Okay, Your Honor.

4 THE COURT: Is that okay?

5 OFFICER MANFRA: Thank you.

6 THE COURT: You're welcome.

7 The objection would be noted.

8 MR. LINK: Thank you.

9 THE COURT: Anything else at this time?

10 MR. OAKLEY: Not from the United States, Your Honor.

11 COURTROOM DEPUTY: We do have one thing --

12 THE COURT: Well, we can deal with the dismissal.

13 MR. OAKLEY: We'll prepare the dismissal.

14 THE COURT: I'll get to the notice of appeal.

15 But Tracy, is there anything you want to say?

16 Yes, sir?

17 OFFICER MANFRA: Your Honor, they did make me aware
18 that they did have a home phone line installed at the house --

19 THE COURT: Okay.

20 OFFICER MANFRA: -- which we could use our base unit
21 which would just monitor him in the house. We can probably do
22 that today upstairs. But that would not monitor anywhere
23 else.

24 MR. OAKLEY: He could stay on house arrest, Your
25 Honor.

1 THE COURT: So obviously he'd have to be on house
2 arrest until other arrangements can be made or some kind of --

3 OFFICER MANFRA: Correct, Your Honor.

4 THE COURT: I'm okay with that. As long as you're
5 satisfied that you can make conditions sufficient that you've
6 got an eye on him, I'm okay with that.

7 OFFICER MANFRA: Okay.

8 THE COURT: Is that all right then?

9 OFFICER MANFRA: Yes, Your Honor.

10 THE COURT: All right. Should he be free to go now?
11 Should we hold him for a period of time?

12 OFFICER MANFRA: As long as I can verify the phone
13 line here, as soon as -- now I can go get the phone number,
14 verify the phone line and have that done here shortly. Then I
15 would know if he would be ready to go on the monitoring. As
16 of right now, I'm taking the word of his girlfriend that a
17 phone line is working and in place.

18 MR. LINK: Mr. Bias has represented the same to me,
19 Your Honor.

20 THE COURT: Yeah, I'm sure, but I'd like to check it
21 out.

22 Do you want to give me a ballpark, Keith? I mean, I hate
23 to put you on the spot.

24 OFFICER MANFRA: I can find out within 15 minutes.

25 THE COURT: Okay. Well, why don't we -- after I go

1 through the rights of appeal and all that stuff, we'll just
2 ask Mr. Bias and his lawyers to stay in the courtroom for a
3 few minutes while we take care of other matters.

4 MR. KELLER: Judge, that's perfectly all right.

5 THE COURT: All right.

6 OFFICER MANFRA: Just a point of clarification, Your
7 Honor?

8 THE COURT: Yes, sir.

9 OFFICER MANFRA: Would we like to keep him on that
10 type of monitoring permanently until he surrenders or would we
11 like to move him to the GPS unit once the equipment comes in?

12 THE COURT: I'm thinking the house arrest concept is
13 probably the smartest for the time being, and then you guys
14 can talk with Tracy. If there's some reason that it's not
15 working, we can make an adjustment. But I think if he's home
16 with his family, that's better than being in the hoosegow;
17 right?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Let's start off with that and see where
20 it goes.

21 OFFICER MANFRA: Okay, Your Honor.

22 MR. LINK: Thank you, Your Honor.

23 THE COURT: Tim, before I do the appeal, anything
24 else?

25 MR. OAKLEY: No, sir.

1 THE COURT: Anything else before I advise him of his
2 rights to appeal?

3 MR. KELLER: No, Your Honor.

4 MR. LINK: No.

5 THE COURT: Mr. Bias, both sides have the right to
6 appeal the sentence that I've just pronounced, not just you
7 but also Mr. Oakley.

8 You have two options. Number one, as you sit here today,
9 if you say, "Judge, I'm not happy with the sentence and I know
10 I want to appeal it," then Barb will start the paperwork to
11 get that underway. If you want to consult with your counsel,
12 see what it all means, decide which way to go, then you've got
13 14 days from the date the entry goes on, which will probably
14 be -- probably not this afternoon but probably this tomorrow.

15 So I'll ask you and your lawyers: As you sit here today,
16 do you know if you wish to appeal the sentence or do you wish
17 a few days to think it over?

18 THE DEFENDANT: I'd like to talk to my attorneys,
19 Your Honor.

20 THE COURT: Okay.

21 Counsel, if Mr. Bias indicates that he wants to appeal the
22 sentence, will you protect his interests in that regard and
23 make sure everything is filed in a timely fashion?

24 MR. LINK: We certainly will, Your Honor.

25 THE COURT: All right. So how do we want to handle

1 -- do we need to have a hearing on their response on the
2 forfeiture?

3 MR. OAKLEY: What I would do is, I would ask the
4 Court to set it for a hearing. We'll have someone in the
5 office -- I think Karen Moss is working on the forfeiture.

6 THE COURT: Why don't we set that before Mr. Bias'
7 surrender date so he can be here? So if you guys need 30 days
8 to file a motion, could we -- I think we would be safe doing
9 it within ten days.

10 Tim, how much time do you need? You'll have your facts
11 organized; right?

12 MR. OAKLEY: Yes, sir.

13 THE COURT: So if we set a hearing date, a hard
14 hearing date, say, 40 days out?

15 MR. OAKLEY: Your Honor, I think that would be fine.
16 I'll talk to Miss Moss to clarify. If there's an issue, I'll
17 call the Court.

18 THE COURT: Is that okay, guys?

19 MR. KELLER: That's fine, Your Honor.

20 MR. LINK: Yes, Your Honor.

21 THE COURT: Barb, you want to go out about 40 days
22 for a hearing date?

23 COURTROOM DEPUTY: I'm looking at possibly -- can you
24 do July 15th, which is a Tuesday? We can do three o'clock in
25 the afternoon.

1 MR. OAKLEY: That's fine with the United States.

2 MR. LINK: What was the time, Miss Crum?

3 COURTROOM DEPUTY: Three p.m.

4 THE COURT: Then do me a favor. If you guys think
5 we're getting into any kind of evidentiary presentation,
6 notify the Court and we'll try to move the time up. Okay?

7 MR. LINK: Certainly, Your Honor.

8 THE COURT: Do you have a response already?

9 OFFICER MANFRA: Not yet, Your Honor. I have to
10 speak with Mr. Bias.

11 THE COURT: Okay. Fine.

12 So Tracy, if you're released, it's under the terms and
13 conditions we just spoke about, basically house arrest with
14 the telephone monitoring and lockdown-type situation. All
15 other terms of the former pretrial release will remain in full
16 force and effect until you get a designation. You'll get
17 notification from the Bureau of Prisons of when and where to
18 be. You have to be there at that time; otherwise, that's a
19 violation of bond and subject to a whole new line of offenses.
20 All right?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: In the meantime, you'll figure out
23 whether or not you want to appeal. We'll also have the
24 forfeiture hearing. Mr. Bias will be present if his presence
25 is needed.

1 Anything else?

2 MR. OAKLEY: No, sir.

3 THE COURT: Yeah, Barb?

4 COURTROOM DEPUTY: Should we put in the Judgment and
5 Commitment order the -- at least a date beyond July 15th just
6 in case --

7 THE COURT: That's okay. So we'll treat it either as
8 a stay until that date or -- yeah, yeah, exactly. We'll cover
9 that.

10 COURTROOM DEPUTY: Okay.

11 THE COURT: All right. Anything else on the record
12 of any kind?

13 MR. KELLER: Nothing further, Your Honor.

14 THE COURT: Okay. Any objections -- I think for
15 Court of Appeals purposes you guys should preserve any
16 objections you think need to be made as to the sentence
17 imposed. So I don't know who wants to handle that. I think
18 you have to restate with some particularity what you've
19 already said, unfortunately.

20 So who wants to handle that?

21 MR. LINK: Thank you, Your Honor.

22 THE COURT: Yes.

23 MR. LINK: For the record, we would -- acknowledging
24 that the Court has sentenced him within the guideline levels
25 to a Level 34, if I'm not mistaken, we would object as to the

1 government's allowed breach of the Plea Agreement, what we see
2 as a breach of the Plea Agreement.

3 It is our position that, under the Plea Agreement, the
4 government was required to move to withdraw Mr. Bias' plea in
5 the event that he didn't cooperate or request no more than ten
6 years in the event that he did cooperate. One way or the
7 other, the government was required to act. It did not file a
8 Motion to Withdraw his plea, instead took his testimony and
9 put him on the stand in open court.

10 We would say at this point the egg can't be unscrambled,
11 would have to essentially -- the government would be bound to
12 comply with their obligations, and we would request a term of
13 no more than ten years.

14 THE COURT: Tim, I don't know if you need to respond
15 at this time or not.

16 MR. OAKLEY: Your Honor, if we could, I guess I'm
17 kind of -- I'm a little confused that, again, the objection is
18 not an objection to the guideline range but the United States
19 not taking away the acceptance and going to trial, which would
20 only hinder Mr. Bias considering the entirety of the plea.
21 The Court has sentenced Mr. Bias to a level of time lower than
22 what the guideline recommendation was. I don't consider the
23 United States in breach. If anyone breached their obligation,
24 it was Mr. Bias.

25 But, you know, to claim now that the United States was

1 obligated to take away any benefit that Mr. Bias received by
2 his admissions, in part, to what he did seems to be a little
3 absurd. But if that's the case, the United States would just
4 simply remove -- we've got seven days. If the Court would
5 want us to file a Motion to Withdraw the plea, go to trial
6 with the statements admitted as per the entire Plea Agreement
7 -- that's our contract -- we would be willing to do that too.

8 THE COURT: I think I've already made my position
9 clear on the record that that's not necessary. The government
10 says that even if they dispute Mr. Bias' honest and complete
11 testimony, it does not entitle him to withdraw his plea once
12 it's entered. He has entered that plea.

13 The government has disputed the honesty and completeness
14 of his testimony, which I think under paragraph 16 kicks
15 everything back to me where Mr. Bias acknowledged at the time
16 of the plea that I am permitted to look at all the offense
17 factors, the recommendations and decide what is appropriate
18 and what is not appropriate.

19 In any event, I don't think that measure is necessary. As
20 I've already indicated, I think the government made its
21 position in terms of cooperation known in a Sentencing
22 Memorandum which is essentially a motion, I guess. I mean, I
23 treat it as a motion of noncompliance.

24 So I think we've covered the record in that regard.

25 MR. KELLER: Judge, if I may? One other issue that

1 Mr. Link didn't bring up is with regard to the disparity. I
2 don't know what Bart Journey's criminal history is.

3 THE COURT: It was worse.

4 MR. KELLER: I assumed it was worse by his testimony
5 in an earlier trial --

6 THE COURT: Yeah.

7 MR. KELLER: -- but there's still the issue of
8 disparity. The Court had shared with counsel earlier that the
9 Court was not impressed, and I don't want to misquote Your
10 Honor, with either Mr. Bias' testimony or Mr. Journey's
11 testimony. So it just seems that they're on equal footing, so
12 to speak, with a criminal history that's worse for
13 Mr. Journey.

14 And we could argue about the severity of the mental -- or
15 the physical conditions. I don't want to get into that, but
16 it's still almost a threefold increase.

17 So I would just leave it at that.

18 THE COURT: Well, I thought I was clear on that;
19 maybe I was not. In arriving at the 168 months, I took into
20 consideration the paragraphs in the Plea Agreement as well as
21 the sentence I handed out to Mr. Journey. So considering the
22 discussion of the 34, considering the discussion of the
23 possible cap, considering where Mr. Journey ended up and
24 Mr. Bias' involvement in this conspiracy as, frankly, the
25 principal, that's how I ended up where I did. I did consider

1 all those factors.

2 MR. KELLER: Thank you, Your Honor.

3 THE COURT: Anything else?

4 MR. KELLER: Nothing further, Judge.

5 THE COURT: I'll ask you guys to just step in the
6 back until Keith is organized and he can report back.

7 Barb, what's is the next case, which one?

8 COURTROOM DEPUTY: The next one is *U.S. versus Mark*
9 *Fantauzzi*.

10 THE COURT: Well, Ransom is here. Why don't we just
11 go straight into that? I understand Mr. Fantauzzi is not
12 present; correct?

13 COURTROOM DEPUTY: Correct.

14 THE COURT: Where is Ransom?

15 Ransom, come on up.

16 Thank you, guys.

17 MR. LINK: Thank you, Your Honor.

18 MR. KELLER: Thank you.

19 THE COURT: So that's the order of the Court, which I
20 guess I should say I consider it to be fair and reasonable in
21 light of the appropriate sentencing factors and discussions we
22 have had.

23 Okay. Thank you.

24 (The proceedings concluded at 11:00 a.m.)

25

C E R T I F I C A T E

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM
THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

S/MARYANN T. MAFFIA, RDR

Official Court Reporter